THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.23804 of 1999

Dated:29.3.2007

Between
M.Nageshwara Rao

.....Petitioner

and

1.The Executive Officer,
Sri Varaha Lakshmi Narasimhaswamy
Devasthanam, Simhachalam
Visakhapatnam District and
Others.

...Respondents

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.23804 of 1999

ORDER:

This writ petition is filed seeking a Mandamus to declare the action of the respondents in proposing to revise the pay scale and effect recovery in pursuance of the proceedings of the 3rd respondent in A.A.A.L.L.F.No.27, dated 06.08.1999, as arbitrary and illegal.

It appears that the petitioner was appointed as Draughtsman in the year 1996 in the 1st respondent- Devasthanam. Subsequently, he was promoted as an Overseer and further promoted as an Assistant Engineer by the 1st respondent *vide* proceedings dated 5.7.1984. Thereafter, the 1st respondent through proceedings dated

17.2.1989 granted exemption from passing the departmental tests. While so, the 1st respondent in his proceedings dated 1.3.1990 promoted the petitioner along with one B.N.Mahapatro to the upgraded post of Deputy Executive Engineer in pursuance of the orders of the 2nd respondent dated 22.2.1990 and since then, he worked in the said post till his retirement on 31.7.1998. According to the petitioner, he discharged the duties of Deputy Executive Engineer with sincerity and honesty. He was transferred on deputation to various other Devasthanams and the last of such posting was at Sri Venkateswara Swamy Devestanam, Dwaraka Tirumala, and he was also granted Special Adhoc Promotion Scale and retired from service on 31.7.1998. While that being so, the 3rd respondent in his proceedings dated 6.8.1999 returned the pension papers submitted by the petitioner on the ground that certain objections were raised in para 20 of the Audit Report of 1990-1991

and directed the 1st respondent to revise the pay fixation and to effect recovery before taking further action with regard to the sanction of the pension. Aggrieved by the same, the present writ petition is filed.

A detailed counter affidavit has been filed by the Audit Officer, Local Fund, and no counter is filed by the Devasthanam.

The Audit Officer, Local Fund, Visakhapatnam seems to have conducted an enquiry into the service rendered by the petitioner from the date of his appointment till his retirement. He had observed that the very promotion of the petitioner as an Assistant Engineer with effect from 11.7.1985 is contrary to the Rules and he ought not to have been granted exemption and the exemption was not granted by the competent authority etc. Further, it is stated that the petitioner had reported to duty as Deputy Executive Engineer on the F.N of 01.03.1990 in the time scale of Rs.1980-80-2780-90-3500. By that time, he

was drawing pay of Rs.1690 + 15 as on 11.7.1989 in the time scale of Rs.1330-60-1930-70-2630 in the category of Assistant Engineer. Consequent to his promotion, his pay was re-fixed at Rs.1980/- with effect from 01.03.1990 in the time scale of Rs.1980-80-2780-90-3500 under FR 22/A1 in the category of Deputy Executive Engineer. Later on, he was transferred to various Devasthanams as Deputy Executive Engineer from 8.7.1991 and retired from service on 31.7.1998 on attaining age of superannuation. Para 20 B of the Audit Report for the year 1990-1991 of Simhachalam Devasthanam, it was objected that out of three Assistant Engineer posts, the Commissioner Endowment Department, Hyderabad *vide* proceedings dated 22.02.1990 upgraded two posts to that of Deputy Executive Engineers and instructed the Executive Officer, Simhachalam Devasthanam, Simhachalam to promote the existing two Assistant Engineers viz., B.N.Mahapatro and M.Nageswara Rao.

The Executive Officer, Simhachalam Devasthanam, *vide* proceedings dated 1.3.1990 issued orders promoting the said two employees as Deputy Executive Engineers in the time scale of Rs.1980-3560 and they joined duty on 1.3.1990 and their pay was fixed at Rs.1980 with effect from 01.03.1990 and it was concluded that the above upgradation of posts and promotion and pay fixation are inadmissible in audit and held under objection for the following reasons.

(1) According to rules issued in G.O.Ms.No.156 Finance & Planning dated 25.6.1987 specific proceedings approval of the Government Revenue and Endowments is necessary for upgrading in the existing posts.

(2) Since the jurisdiction of the original Deputy Executive Engineer and three Assistant Engineer which are originally sanctioned by the Commissioner of Endowments department, Hyderabad, on

permanent basis was not increased the need for upgradation of the said posts was not justified.

Further, it is stated that the petitioner got promotion to the post of Deputy Executive Engineer ignoring common seniority of 8 temples as per Service Rules applicable to the Temple. The petitioner can get benefit of exemption as per the above said GO only one time in the entire career and he availed it while taking first promotion. Hence, the petitioner is not entitled to be promoted as Deputy Executive Engineer. Due to the above irregularities, the differential pay and allowances paid to them from 1.3.1990 to 28.2.1991 as worked out in Item B of annexure amounting to Rs.9581-80 are inadmissible in audit and held under objection. Accordingly, the pensionary benefits of the B.N.Mahapatro, Deputy Executive Engineer were revised in the cadre of Assistant Engineer in letter Rc.No.B1/2953/94, dated 5.7.1996 of

the Executive Officer, Simhacahalam Devasthanam. Since the case of the petitioner is similar to that of B.N.Mahapatro, the Executive Officer, Simhachalam Devasthanam has requested the Assistant Audit Officer, *vide* L.F.No.27 dated 6.8.1999 to retransmit the pension proposals of the petitioner after revising the pay fixation and effecting recovery, referring letter dated 31.7.1996 of Audit Officer, Local Funds, Visakhapatnam and also para No.20 of the Audit Report for the year 1990-91 of Simhachalam Devasthanam, Simhachalam. Hence, in view of the above rule position and Para No.20 of the Audit Report, the petitioner is entitled to the post of Assistant Engineer and pay at Rs.1690 + Rs.15 p.p. with effect from 11.7.1989 in the time scale of Rs.1330-2630 and consequential increments and pay fixations thereon. The same is neither arbitrary nor illegal and no interference is called for.

Heard the learned counsel on either

side.

The petitioner was given exemption of passing departmental tests since he had crossed 45 years of age by that time and was promoted as Assistant Engineer. Thereafter, the post of the Assistant Engineer was upgraded subject to approval by the competent authority with effect from 1.3.1990 and the petitioner had been drawing salary in the cadre of Deputy Executive Engineer from 1.3.1990 till attaining age of superannuation on 31.7.1998. The purported objection taken at para 20 B of the Audit Report of the year 1991 was not given effect to and had not seen the light of the day. Only after the petitioner submitted his pension papers claiming pension and other retirement benefits, in the cadre of Deputy Executive Engineer, objection was taken and the past incidents were dug up to show that he is not entitled for promotion. Even if he is entitled for exemption, that exemption could have been granted only once and not

otherwise. The up gradation of the post of Assistant Engineer as Deputy Executive Engineer with effect from 1.3.1990 is not approved by the authority. The contention of the respondents that the petitioner is entitled for claiming pension and other retirement benefits only as an Assistant Engineer and not as Deputy Executive Engineer seems to be unreasonable as the petitioner was drawing salary for a period of eight years and allowances in the upgraded post of Deputy Executive Engineer. Once he had drawn the salary and worked as a Deputy Executive Engineer for 8 years, any approval whether it is by the competent authority or any other authority, is immaterial after the petitioner has attained the age of superannuation.

Therefore, the respondents are directed to process the pension papers and fix the pension treating the petitioner to have been retired as a Deputy Executive Engineer with effect from 31.7.1998 for all purposes.

With the above direction, the writ petition is disposed of. No costs.

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29-03-2007

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